

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5212 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MAHESHKUMAR MAGANBHAI SODHA (PARMAR)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR.C.C.BHALJA ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/02/99

ORAL JUDGEMENT

Prayer in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 23.6.1998 passed by the Police Commissioner, Ahmedabad under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA') and for immediate release of the petitioner from illegal detention.

The Detaining Authority after considering the

registered cases under various sections of the Bombay Prohibition Act and also considering the statements of two confidential witnesses was subjectively satisfied that the activities of the petitioner were prejudicial for maintenance of public order. Accordingly, the impugned order was passed which is under challenge in this writ petition.

The impugned order has been challenged on the only ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. This contention has force. The only material before the Detaining Authority was one registered case under the Bombay Prohibition Act and statements of the two confidential witnesses. So far as the registered case under Bombay Prohibition Act is concerned, there is no disclosure in the grounds of detention that when countrymade liquor was seized from the petitioner he created a situation which was prejudicial for maintenance of public order. There is no allegation that the petitioner resisted search and seizure at that time. Consequently, the registered cases cannot be pressed in service for subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The petitioner was already booked under relevant sections of the Bombay Prohibition Act. At the most, it was the case of law and order problem which was effectively tackled by booking the petitioner under the aforesaid sections. The other material is the two statements of the two confidential witnesses who have stated about the incidents dated 2.6.1998 and 27.5.1998. Regarding incident dated 2.6.1998, the witness gave statement that the petitioner being afraid of the patrolling being made by the police approached him to keep the stock of countrymade liquor which he was carrying with him. The witness refused to oblige the petitioner whereupon later became excited. He dragged the witness in public and beat him in the company of his associates. Neighbouring persons gathered. Knife was shown by the petitioner. He rushed towards persons who collected at the spot and they had to run here and there and panic gripped in the area.

The other witness stated about the incident dated 27.5.1998, when his vehicle was demanded by the petitioner for carrying stock of liquor and on refusal he was likewise beaten. People collected at the spot. They were also chased showing knife, as a result of which they went here and there and panic gripped in the area and

daily business of the people was disrupted.

Careful examination of these two statements would simply indicate that these two incidents created, if at all, only law and order problem and not disturbance of public order. There is settled distinction between disturbance of law and order and public order. The disturbance of public order means disturbance in the locality or in the area in such a manner that public peace and tranquillity is disturbed and even tempo of life of the locality is disturbed. It is not necessary that for every incident curfew like situation or riot like situation should have been created. However, for proper appreciation of meaning of disturbance of public order, section 3(4) and explanation thereof under PASA has to be kept in mind which interalia provides that the activity should be such which is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health is created by such activity.

The two witnesses have stated nothing more than the incidents between the petitioner and the two witnesses on two dates. If certain persons collected at the spot that does not mean that general public of the locality or particular section of the public of the locality was disturbed or even tempo of the life of that section of the public was disturbed. Consequently, the statements of these two witnesses also cannot be pressed in service for concluding even subjectively that the activities of the petitioner were prejudicial for maintenance of public order. The preventive detention of the petitioner under these circumstances cannot be sustained. The writ petition therefore succeeds and is allowed. The impugned order of detention dated 23.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt